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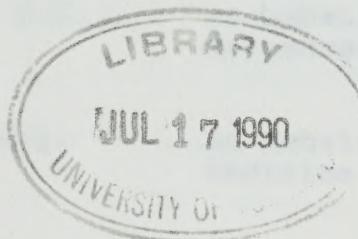
NETWORK COURT REPORTING

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COMMISSION OF INQUIRY INTO THE
USE OF DRUGS AND BANNED PRACTICES

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INTENDED TO INCREASE ATHLETIC PERFORMANCE



HEARING HELD AT THE ROYAL YORK HOTEL,
ONTARIO ROOM, TORONTO, ONTARIO ON

15 TUESDAY, NOVEMBER 15, 1988

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B E F O R E:

THE HONOURABLE MR. JUSTICE CHARLES LEONARD DUBIN

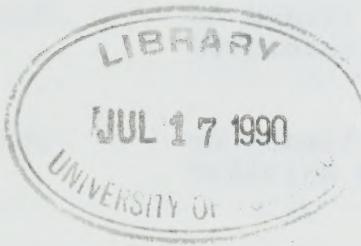


NETWORK COURT REPORTING

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COMMISSION OF INQUIRY INTO THE
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NETWORK COURT REPORTING

COUNSEL:

1 ROBERT ARMSTRONG, Q.C. on behalf of the
MICHEL PROULX, Q.C.
JOHN ZUBER, Esq. Commission

5 EDWARD R. SOJONKY, Q.C. on behalf of the
Government of Canada

THOMAS C. BARBER, Esq. on behalf of the Sport
Medicine Council of Canada

10 RALPH S. MCCREATH, Q.C. on behalf of the Canadian
ROBERT L. FALBY, Q.C.
DARRYL MANN, Esq. Olympic Association

15 ROGER BOURQUE, Esq. on behalf of the Canadian
Track and Field
Association

JAMES LEAL, Esq. on behalf of the Canadian
Weightlifting Federation

20 JULIAN PORTER, Q.C. on behalf of the College
RICHARD H. STEINECKE, Esq. of Physicians and Surgeons
of Ontario

EDWARD M. FUTERMAN, Q.C. on behalf of Ben Johnson
LORNE M. LIPKUS, Esq.

25 ROY McMURTRY, Q.C. on behalf of
ALAN PRATT, Esq. Charles Francis

DAVID H. SOOKRAM, Esq. on behalf of
LORNE LEVINE, Esq. Dr. M. G. Astaphan

30 DENNIS O'CONNOR, Q.C. on behalf of
Ms. GAYLE PINHEIRO Mrs. A. Issenjenko

THE COMMISSIONER (The Honourable Mr. Justice C.L. Dubin): Before moving to the formal matters that I'd like to deal with today, I thought it would be helpful to those who are participating in the proceedings that I begin with a preliminary statement of the work commissioned and the matters that presently appear before us to be worthy of inquiry.

On the recommendation of the Prime Minister, by Order-in-Council, this Commission was established under Part I of the Inquiries Act of Canada and I have been appointed as Commissioner. Copies of the Order-in-Council, including the terms of reference, are available with our Registrar.

This is not an inquiry merely into the conduct of one or more individuals or one or more associations. The terms of reference are very broad. The Order-in-Council recognizes that there is a clear public concern with respect to the use of various drugs and banned practices intended to increase athletic performance, and I am directed to inquire into and report on the facts and circumstances

1 surrounding the use of such drugs and banned
practices in Canada and to make recommendations
regarding the issues related to the use of such
drugs and banned practices in sport.

5 Included in this broad inquiry, I am also
directed to inquire into and report on the
recent cases involving our Canadian athletes who
were to or did compete in the 1988 Olympic Games
10 in Seoul, Korea.

15 This session of Commission is what we
call an organizational session designed to
identify those persons or associations who may
have a direct interest in proceedings and to
afford them an opportunity to participate.

20 Before proceeding to do so, I thought it
would be in order to give a brief outline of the
work of the Commission to date.

25 Once appointed, the entire responsibility
for the organization of this Commission is mine.
It was necessary to obtain premises and staff.
With the assistance of the Office of Privy
Council and the Federal Department of Public
Works, premises have been obtained at 1235 Bay
30 Street, just north of Bloor. Those premises are
not available today but future hearings of the

Commission will be held at those premises. I convened this session here today because I was anxious to proceed as expeditiously as possible.

It was apparent to me on reading the terms of reference that I needed help and a great deal of it.

One of my first tasks was to select Commission counsel who will play a very important role in the work of a Royal Commission and I am delighted and gratified that I have been able to obtain the services of two of the outstanding members of the Bar of this country.

Robert Armstrong, Q.C. was a former articled student of mine, a former junior and a former partner, and he survived. He has now arisen to the ranks of one of our leading counsel in the field of litigation.

Of particular importance to this Commission is his extensive experience in Royal Commissions in the past, one of which was as counsel to Mr. Justice Grange in the lengthy Inquiry into the Mississauga Train Derailment. Mr. Justice Grange highly recommended Mr. Bob Armstrong to be my counsel.

I feel also I'm very fortunate in having

1 Michel Proulx Q.C. of the Quebec Bar to agree to
act as co-counsel. Although I had met Michel at
various legal conferences, I did not know him
that well. But everyone I inquired into
5 recommended him so very highly. He is one of
the leading counsel in the Province of Quebec
with very extensive and broad experience. Of
particular importance, he has acted as counsel
10 for interested parties in many federal and
provincial Commissions. I'm fortunate to have
Michel and Bob, such a strong team, to assist in
the work of the Commission.

15 We will be adding a junior counsel and a
research director who will shortly be appointed.

I've also been able to obtain the
20 services of Kay Cornwall as our office
administrator and Robert McBey as our Registrar,
both of whom have extensive experience in
25 administrations of Royal Commissions and have
served in a similar capacity in the recent
Commission conducted by Chief Justice Parker
into Alleged Conflict of Interest. They will
30 both be available to be of any assistance they
can for those interested in the progress of the
Commission.

1 This being a Federal Inquiry, under the
Inquiries Act of Canada, Mr. McBey has made
available simultaneous translation of the
proceedings in both of our official languages.

5 It was also apparent that I need skilled
investigators. I thought it would be helpful to
the Commission if I were to obtain the services
of persons with experience investigating the
subject matter under inquiry.

10 The Commissioner of the RCMP has seconded
to the Commission Mr. Donald Willott, Mr.
Jacques Guay, Mr. Ken St. Germain.

15 The Chief of the Metropolitan Police
Force has assigned Mr. Walter Greczko and Gary
McQueen. They are trained, professional
investigators now seconded to the Commission and
on this payroll they will act in that capacity.

20 It also became apparent to me that I need
the best medical and scientific assistance that
I could obtain in light of the issues which I
perceive will arise.

25 I contacted Dr. George Connell, President
of the University of Toronto, who in his own
right is one of our leading biochemists, and
discussed the terms of reference with him. He

1 advised me that he thought that I needed, on my
panel of medical and scientific advisors, four
experts with particular knowledge in four
medical and scientific specialties. He gave me
5 a list of names of the most outstanding experts
in Canada in these four specialties. The first
ones that I called all immediately expressed a
willingness to assist.

10 I have selected Dr. Jack Laidlaw as my
senior medical advisor. He is a professor in
the Department of Medicine at the University of
Toronto and one of Canada's outstanding
15 endocrinologists.

20 Joining me on my panel of medical and
scientific experts will be Dr. Arnis Kuksis,
Ph.D.. He has had extensive experience in
analysis of lipids, including sterols and
steroids, and is regarded by his peers as one of
25 the most outstanding experts in this field with
a special expertise in steroid measurements.

30 Dr. Robert Goode has also agreed to join
our panel. He is a professor of Physiology and
Physical Education, has earned an outstanding
reputation in that field and has particular
knowledge of what is called sports medicine.

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1 There will be added to our panel a
biochemist with special knowledge of steroids.

5 As yet, I'm unable to confirm that appointment
but I will be in a position to announce that
appointment very shortly.

10 I'm also in the process of selecting the
advisory panel of sports experts, in addition to
Bob Armstrong and Michel Proulx, men and women
who by their own experience and dedication to
sports have earned a reputation for integrity
and leadership. They will also guide me as to
the areas of the inquiry which might otherwise
be overlooked.

15 I have just been able to confirm this
morning that Mr. Hugh Fraser will head my panel
of sports experts. Mr. Hugh Fraser is a former
20 Olympic athlete. He is now President of the
Sports Federation of Canada and serves the
Commissioner for the Canadian Human Rights
Commission. We will presently, with his
25 assistance, be announcing the other men and
women who will be serving on that panel.

30 In order to familiarize myself with the
matters that I should be inquiring into, I have
over the last few weeks met informally with

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1 counsel for many individuals and associations
who would appear to have the most interest in
this inquiry.

5 I did so not only with a view to
familiarize myself wih the issues that will
likely arise, but also to seek the benefit of
their advice as to how they thought this inquiry
can best be conducted and to seek their
co-operation, which I hope I have achieved.
10

15 I also attended upon the Minister of
State for Fitness and Amateur Sport who has made
his entire department available to my counsel
for assistance. Both have already been in touch
with his Deputy Minister who has already
provided them with a great deal of information,
to them, and will continue to assist us in the
future.
20

25 I also met with the Deputy Minister of
Tourism and Recreation of Ontario, within which
the provincial counterpart of the federal
Department of Fitness and Sports is included,
and with his Assistant Deputy. They've agreed
to assist me in every respect. Save for Quebec,
the participation in sports by other provincial
governments is similar to that of Ontario and
30

1 the Assistant Deputy has also agreed to assist
our Commission as liaison with the other
provincial governments. Quebec has its own
organization, somewhat differently constituted
than that in other provinces, and Michel Proulx
5 has already been in touch with that department
and has also received their pledge of
assistance.

10 Our investigators and Commission counsel
are well underway in carrying out their
responsibilities and a great many witnesses have
already been interviewed. A substantial amount
15 of scientific information has already been
received.

20 From my preliminary reading, it is
apparent that the use of drugs by athletes to
enhance performance, particularly in
international competition, is not new and indeed
dates back to the early history of Olympic
competition.

25 But over the years, it's become a matter
of increased concern, as the threat to the very
integrity of sport and destructive of its very
objective.

30 The International Olympic Committee

1 recognized this threat and in 1968 established,
as a very important arm of its activities, a
medical commission, of which we'll hear more,
which played a very important role in the 1988
Olympics.

5 Canada has played a very prominent role,
both domestically and internationally, in
seeking to eliminate drug abuse. In seeking
international co-operation to prevent such
abuse, Canada co-hosted, with the medical
10 commission of the IOC, the first permanent world
conference on anti-doping in sport. It was held
in Ottawa in June of this year, attended by
15 representatives of 25 nations, at which time the
first international anti-doping charter was
endorsed. And we'll be hearing more of that
charter and its likely implementation in the
20 future.

25 As a result of the meetings that I have
had and the information which we have received
to date, I thought it might be helpful if I
outline, by an outline, in a preliminary way
some of the matters which it would appear must
be inquired into, many of which are well
30 underway.

1 The staff of the Commission is presently
conducting a thorough investigation into the
extent, if any, of the use of drugs and banned
practices by those Canadian athletes who are
governed by provincial, federal and
5 international sports federations.

10 And it's not our present intention to
inquire into the conduct of those athletes whose
activities are governed by professional bodies,
such as the Canadian Football League and the
National Hockey League.

15 The success of this investigation will
depend on the co-operation of our Canadian
athletes whose interest I am seeking to advance.
From the reports which I have received, I expect
that we will receive such co-operation.

20 With respect to the prohibited drugs, we
will be concentrating initially on anabolic
steroids which can be taken by injections or in
pill form.

25 The use of anabolic steroids by athletes
participating in international competition
appears to have been first detected in 1954.
Their widespread use, which some writers on the
30 subject have expressed as having almost "reached

1 epidemic proportions", was demonstrated in 1983
in the Pan-American Games in Caracas, Venezuela.

5 During those games, 19 competitors were
disqualified when their drug use was detected.

10 As reported, dozens more of the athletes
voluntary withdrew from the games apparently in
fear of the stringent drug testing techniques.

15 We will also be inquiring into whether
any of our athletes are engaged in blood doping,
soda-loading or the use of beta blockers and
diuretics.

20 Both the Government of Canada and the
provinces expend a great deal of money to
support our athletic programs by way of
providing funds for plant and facilities, for
coaching and for financial support of our
athletes. The Government of Canada has imposed
severe strictures to eliminate the use of
enhanced performance drugs and banned practices
in sport for those who receive financial
assistance.

25 We will be inquiring into the role of
provincial, federal and international sports
agencies, their funding of athletes and the
steps taken by them to eliminate the use of

prohibited drugs and banned practices.

We will also be hearing from the International Olympic Committee and the Canadian Olympic Association and as to their efforts being made to eliminate the use of such drugs and banned practices.

We will be extensively inquiring into the use of anabolic steroids, their effect on the athlete, both as performance and health and the potential harm that may result to both male and female athletes who use them.

We will also be inquiring into the supply of anabolic steroids in Canada, their method of distribution and, in that light, consider the adequacy of the regulation of anabolic steroids under the Food and Drug Act.

We will also be inquiring into the validity and the adequacy of testing policies and procedures to detect such anabolic steroids and other banned practices.

We will, of course, also be inquiring into, in detail and step-by-step, all the facts and circumstances of the alleged use of banned drugs by Canadian athletes who were to or did participate in the Seoul Olympics, and all

1 aspects of those events will be carefully
reviewed.

5 We are also inquiring into what is
transpiring in other countries participating in
international competition and into their efforts
to eliminate the use of prohibited drugs and
banned practices and whether there is a level
10 playing field for our athletes who participate
in such competition, and if that cannot be a
accomplished, what should Canada's future
participation be in such competitions.

15 I regard it as a very important part of
the work of the Commission to inquire into
responsibilities for doping violations, if such
violations are occurring. The responsibility is
obviously not that solely of the athlete and we
20 will, therefore, inquire into the
responsibilities of self-governing sports
federations, both national and international,
and of coaches, trainers, physicians, agents and
25 the like.

30 I think it also important to consider
whether there are pressures being placed on our
young men and women athletes to tempt them to
cheat, a course of conduct which is the

1 antithesis of athletic competition and even at
the risk to their own health.

5 Have we, as Canadians, lost track of what
athletic competition is all about? Is there too
much emphasis by the public and by the media on
the winning of a gold medal in the Olympics as
the only achievement worthy of recognition?

10 A few years ago the Government of Canada
established a Commission for fair play in
athletics. They have been in touch with me and
their views will be heard during the progress of
the Commission. Are Canadian athletes being
15 exploited by others who, for financial gain or
other gain, would risk reputation and health of
our athletes?

20 These are only some of the issues which
appear to me at the moment that must be inquired
into, but nothing is foreclosed. It is said the
Royal Commission has a life of its own and I am
confident that there will be many other matters
25 which will come to our attention and be raised
in the future progress of the Inquiry.

30 We are not able at this time to announce
the date for the first session at which evidence
will be heard or the order to which the various

1 issues will be addressed. That will have to
5 await discussion between Commission counsel and
other counsel who will be appearing and at the
convenience of the many witnesses who will be
called. Ample notice will be given to all
interested.

10 I would like to now say a word about the
conduct of this Inquiry. Having appeared in
every capacity in many Royal Commissions, it is
a matter of record that I have very strong views
as to how a Royal Commission should be
conducted.

15 A Royal Commission is not a trial. No
one is charged with any criminal offence nor is
anyone being sued. There is, to use a legal
jargon, no lis inter parties. There is no
20 dispute between the parties or an issue to be
resolved between them.

25 Commission counsel are not prosecutors,
nor is their function to prove anything. They
are the legal arm of the Commission and I am
their only client. Their function is, with the
benefit of their skill and experience, to
30 present to the Commission in an orderly way all
the evidence available to them which relates to

any issue before us and in an even-handed manner. There may well be a conflict of evidence, which is often the case, but all the witnesses will be treated in the same fair manner and, in the end, it will be my responsibility to resolve any such conflict.

In pursuing their duty, and in order to bring out all the evidence, they may, if the occasion warrants, be firm and vigorous but at all times they will be courteous. In the end, I may ask them to outline the portions of the evidence which they think are most relevant but they will take no position.

In order to avoid the appearance of an adversarial process, I would prefer to have all witnesses examined initially by Commission counsel.

The rules of evidence that govern proceedings in court do not apply to Royal Commissions and hearsay evidence is, in general sense, admissible. I realize, however, that reputations may sometimes be unfairly destroyed and I will do all that I can to see that any evidence which is completely unfounded will not be introduced to destroy the reputation of any

1 person.

5 A Royal Commission should look to the future and not solely hearken on the past. To determine what has transpired in the past is necessary to identify the issues and ascertain what, if anything, went wrong but the effectiveness of a Royal Commission is, by its recommendations, to address the future.

10 Athletics are a very important part of the culture of our society and contribute so very much to the health and character of those who participate in them, arming them with essential tools to help them in their future progress in our communities and as an example to others. It is hoped, in the end, a healthy climate for athletic competition can be created 15 to further its very objectives.

20 And now a word for the media. I appreciate so very much the courtesy that 25 has been extended to me by all of you. And, as most of you know, I have endeavoured to reciprocate in kind. Although a Royal Commission is not a court and a report is not a judgment in deciding anyone's legal rights and, 30 in conducting it, I sit as a Commissioner, I am

1 still nevertheless a judge.

Under those circumstances, I must refrain
from making any comments other than what I have
to say during the public session of the Inquiry
and in my report.

5 Mr. Robert McBey, our Registrar, will be
available to assist you in making necessary
arrangements for the coverage of the
proceedings.

10 Also, it would be wise, in my respectful
opinion, for all those who appear as witnesses
or counsel to follow the same pattern and, in
15 fairness, to all those who have an interest in
these proceedings to confine your statements and
submissions to the public session of the
Inquiry.

20 Although much has been accomplished in
the very short time that the Royal Commission
has been underway, it must be apparent that
25 there is an enormous amount of investigation,
consultation, preparation of study yet to be
completed if this Commission is to be conducted
in a manner which meets my satisfaction, and I
will have it no other way.

30 The staff of the Commission are working

1 as expeditiously as possible, sometimes around
the clock, and they cannot work any harder.

5 On a personal note, I have been attending
the work of the Commission in addition to my
judicial duties and with the assistance of my
colleagues in the Court of Appeal, who will
assume a burden even heavier than they now
carry, I will be shortly relieved of my judicial
duties and will be devoting more and more time
10 to work with the Commission.

15 I have been given a very difficult task
and I will spare no effort to justify the
confidence that's been placed in me but it will
take time. I realize the importance of
completing our mandate as quickly as possible
20 and we will be making every effort to do so but
it must be done properly.

25 And so today I ask not only for the
co-operation of all of those who are
participating before the Commission but for your
patience as well.

30 We will now take, before we proceed with
the order of business for today at which time I
will entertain applications by persons to
participate in these proceedings, I thought it

would be most convenient if I took a short break
1 and to have those identify themselves, who wish
to seek status, and to have them identify
themselves to Commission counsel and to our
Registrar.

5 We'll take a short, ten minute break.

10 ---Whereupon the proceedings adjourned at 10:35
10 a.m. and resumed at 11:00 a.m.

15 THE COMMISSIONER: Please come to order.
Mr. Armstrong has supplied me with the name of
counsel who are to appear and apply for status.

15 Mr. Sojonky, you are here for?

20 MR. SOJONKY: Requesting status for the
Government of Canada.

25 THE COMMISSIONER: What I propose to do,
before we go further, is I will just have people
identify themselves and obviously the ones I see
so far, we have no problem in them being
recognized as ones who should have direct
interest in the proceedings.

30 Their exact role and the amount of
participation I think is appropriate should
await, I think, to a later time when we see the

1 progress of the Inquiry and the subject matters
under investigation.

So, very well, Mr. Sojonky, we will be in touch with you as to all future hearings.

5 MR. SOJONKY: Thank you, Mr. Commissioner.

THE COMMISSIONER: Thomas Barber?

10 MR. BARBER: Mr. Commissioner, I'm here on behalf of the Sport Medicine Council of Canada.

15 THE COMMISSIONER: Right, thank you.

MR. BARBER: Thank you.

20 THE COMMISSIONER: Mr. McCreath, Q.C., Mr. Falby, Q.C..

25 MR. McCREATH: The Athletes Advisory Council which is a branch of the Canadian Olympic Association.

THE COMMISSIONER: Excuse me, may I get that, please? Athletes...

MR. McCREATH: Athletes Advisory Council.

25 THE COMMISSIONER: Athletes Advisory Council. Is that part of the Canadian Olympic Association?

30 MR. McCREATH: Yes.

THE COMMISSIONER: Thank you.

1 MR. ARMSTRONG: Mr. Commissioner, I'm
sorry, on that list that name is listed
separately under Mr. Thomas' name but Mr.
McCreath has since advised me that ---

5 THE COMMISSIONER: He will be appearing.

MR. ARMSTRONG: He will be acting for
them.

10 THE COMMISSIONER: Thank you. Is Mr.
Bourque here?

MR. BOURQUE: Yes, Mr. Commissioner.

THE COMMISSIONER: Thank you.

15 MR. BOURQUE: Seeking status for the
Canadian Track and Field Association.

THE COMMISSIONER: Thank you. Mr. Leal?

20 MR. LEAL: Yes, Mr. Commissioner. I am
seeking status for the Canadian Weightlifting
Federation.

25 THE COMMISSIONER: I got a call from your
principal and he's engaged elsewhere but will he
be appearing with you on this?

MR. LEAL: He will be appearing.

30 THE COMMISSIONER: All right. And Mr.
Julian Porter, Q.C?

MR. PORTER: Yes. I'm with Mr.
Steinecke, appearing for the College of

1 Physicians and Surgeons of Ontario, Mr.
Commissioner.

5 THE COMMISSIONER: Thank you. We are
looking forward to help from you, Mr. Porter.
Your people have a great deal of scientific
knowledge up there.

10 Is Mr. Futerma here?

15 MR. FUTERMAN: Mr. Commissioner, I
represent Ben Johnson. I'd like to introduce my
colleague, Lorne Lipkus, who will be assisting
me.

20 THE COMMISSIONER: Thank you. The
Honourable Roy McMurtry?

25 MR. McMURTRY: Yes, Mr. Commissioner. I
represent Mr. Charlie Francis and I will be
assisted by my colleague, Mr. Alan Pratt.

30 THE COMMISSIONER: Thank you. Nice to
have you back practicing law, Mr. McMurtry.

35 MR. McMURTRY: Thank you, Mr.
Commissioner.

40 THE COMMISSIONER: Is Mr. Sookram here?

45 MR. SOOKRAM: Yes, Mr. Commissioner. I
will be representing, as far as my instructions
go up to today, I'm representing Dr. Astaphan.

50 THE COMMISSIONER: Thank you.

1 MR. SOOKRAM: I can't speak about
tomorrow.

5 THE COMMISSIONER: I think tomorrow is
more important than today, as a matter of fact.

10 MR. SOOKRAM: My associate here, Mr.
Levine, will be assisting me.

15 THE COMMISSIONER: Thank you. What is
your name? Sorry, I didn't catch it.

20 MR. SOOKRAM: Lorne Levine.

25 THE COMMISSIONER: Thank you. Is Mr.
Dennis O'Connor, Q.C. here?

30 MS. PINHEIRO: Mr. Commissioner, I'm
afraid Mr. O'Connor can't be here in person
today. My name is Gayle Pinheiro and I will be
assisting Mr. O'Connor.

35 THE COMMISSIONER: You are Gayle
Pinheiro, is it?

40 MS. PINHEIRO: Yes.

45 THE COMMISSIONER: And you will be
assisting Mr. O'Connor for Mrs. Issenjenko?

50 MS. PINHEIRO: Yes.

55 THE COMMISSIONER: Thank you. Now, I
think we have all counsel here. Well, I welcome
all of you to the work of the Commission. I
know most of you and I am sure I will get your

1 co-operation and help which is obviously
something I need very much.

5 I think we should leave that today as it
is and Commission counsel will be in touch with
all of you to advise you as to the future
progress of the Inquiry, what matters are going
to be considered first and then we can work out
amongst ourselves the amount of participation
which would be appropriate.

10 I'm anxious to have the help of all of
you but I'll try to avoid any repetition which
will not be fruitful for the work of the
Commission.

15 So with that, we will adjourn for today
and I am delighted that you are here to assist
me and I am delighted to be working with you in
the future.

20 Thank you.

25 ---Whereupon the proceedings herein are
adjourned.

1

INITIAL HEARING

Nov 15/88